



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

JUL 15 2011

OFFICE OF  
COMPLIANCE AND ENFORCEMENT

**Certified Mail -Return Receipt Requested**

Michael Thrasher  
Corporate Environmental Manager  
Gardner-Fields, Inc.  
4161 East 7<sup>th</sup> Avenue  
Tampa, Florida 33605

Joe Ignatoski  
President  
IBC Manufacturing Co.  
416 E. Brooks Road  
Memphis, Tennessee 38109

**Re:** Notice of Intent to File Administrative Complaint for Violation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

Dear Mr. Thrasher and Mr. Ignatoski:

The U.S. Environmental Protection Agency (EPA) has identified violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) by Gardner-Fields, Inc. (GFI) and IBC Manufacturing Co. (IBC). The purpose of this letter is to inform you of the EPA's intent to initiate an action for civil penalties for these violations. By this letter, we wish to provide you with an opportunity to discuss this matter with the EPA prior to the filing of a complaint. A summary of the violations identified by the EPA is enclosed with this letter.

FIFRA Section 14(a), 7 U.S.C. § 136l, and 40 C.F.R. Part 19 authorize the EPA to file a complaint for penalties of up to \$6,500 for each offense conducted before January 15, 2009 by any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of Section 12 of FIFRA. The EPA uses the December 2009 Enforcement Response Policy for FIFRA (ERP) to calculate penalties in FIFRA enforcement actions to ensure fair and consistent penalty amounts in these cases. Applying the ERP to the circumstances of this case, the EPA has determined that an appropriate penalty to settle these violations is \$505,700. A copy of the ERP is enclosed for your information along with an explanation of how EPA calculated the proposed penalty.

In general, EPA favors pre-filing discussions as they help ensure that we have all relevant information and can lead to resolution of enforcement matters without resorting to the time and expense of litigation. If we are able to reach a settlement, no complaint would be filed; instead, we would resolve that case with an administrative consent agreement and final order. Once a consent agreement and final order is signed, the EPA generally issues a press release announcing the settlement.

If GFI/IBC and the EPA do not settle within 60 days of initial negotiations, the EPA will file an administrative complaint, and the case will be assigned to an administrative law judge. Additionally, the EPA reserves the right to seek the maximum allowable penalty at law in litigation of this case.

If you wish to schedule a meeting, or if you have any questions about this matter, please contact Mercer St. Peter, Assistant Regional Counsel, at (206) 553-0240 or by email at [st-peter.mary@epa.gov](mailto:st-peter.mary@epa.gov) within 20 days of your receipt of this letter. Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Downey" with a stylized flourish at the end.

Scott E. Downey, Manager  
Pesticides and Toxics Unit

Enclosures

1. Summary of Violations and Proposed Penalty
2. Enforcement Response Policy for FIFRA Section 7(c)

cc w/ enc: Jeaneanne Gettle  
U.S. Environmental Protection Agency  
Region 4

### Summary of Violations and Proposed Penalty

#### Gardner-Fields, Inc. (GFI) / IBC Manufacturing Co. (IBC)

The FIFRA violations pertain to the production, sale, and distribution of the following products at the GFC facility at 2240 Taylor Way, Tacoma, Washington 98421:

- *ATCO Woodlast 1420* (EPA Reg. No. 1022-491-3486)
- *ATCO Woodlast 2c 1423* (EPA Reg. No. 1022-522-3486)
- *ATCO Woodlast 2 RTU 1422* (EPA Reg. No. 1022-518-3486)
- *ATCO Shakelast 1441* (EPA Reg. No. 1022-518-3486)

During an inspection of the GFC facility on September 24, 2008, the above products were misbranded. The product labeling lacked many important revisions to the Precautionary Statements, Storage and Disposal Statements, and Directions for Use found on the most recent EPA-approved labels. As described in 40 C.F.R. § 152.130(c), the registrant may distribute or sell a product under the product's previously approved label for a period of 18 months after EPA's approval of the revised label. At the time of the inspection, GFI and IBC were using the previously approved label well after the 18-month time period. GFI provided sales log for 2008 which listed 156 individual sales of misbranded products.

The following table summarizes the violations of the specified Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) regulatory requirements alleged by EPA, and EPA's calculation of an appropriate civil penalty amount to settle these claims in accordance with the provisions of the December 2009 Enforcement Response Policy for FIFRA (ERP). Please refer to the ERP for a detailed explanation of the calculation methodology.

EPA reserves the right to seek the assessment of a higher penalty, subject to the \$6,500 per violation limit established by FIFRA, in the event that this matter proceeds to litigation.

<b>Violation</b>	<b>Size of Business</b>	<b>Gravity of the Violation</b>	<b>Proposed Penalty Amount per count</b>
FIFRA Section 12(a)(1)(E). Distribution and sale of misbranded pesticides (156 counts).	Category I	Level 2 (FIFRA Sections 2(q)(1)(F) and (G))	\$3,900 (129 counts) \$2,600 (27 counts)
Economic Benefit of Noncompliance			\$0
<b>TOTAL PROPOSED SETTLEMENT AMOUNT</b> (rounded to the nearest \$100)			<b>\$488,500</b>